

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22<sup>ND</sup> DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.11024 OF 2023

**BETWEEN:**

DR. MADHUKAR G. ANGUR  
S/O LATE GUDDAPPA BASAPPA ANGUR  
AGED ABOUT 62 YEARS  
R/AT NO. 1128, 21<sup>ST</sup> 'A' CROSS  
14<sup>TH</sup> MAIN, HSR 3<sup>RD</sup> SECTOR  
HSR LAYOUT, BDA COMPLEX  
BENGALURU SOUTH, HSR LAYOUT  
BENGALURU - 560 102.

... PETITIONER

(BY SRI KIRAN S. JAVALI, SR. ADVOCATE FOR  
SRI SRIVASTHA H. K., ADVOCATE)

**AND:**

- 1 . THE STATE - THROUGH  
THE DEPUTY SUPERINTENDENT OF POLICE  
CYBER CRIME P.S. CID  
REPRESENTED BY  
THE STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU - 560 001.
- 2 . MR. ABHAY CHEBBI  
S/O SRI GOVIND CHEBBI  
ALLEGED DIRECTOR  
ALLIANCE BUSINESS SCHOOL

NO.2 AND 3, 2<sup>ND</sup> CROSS, 36<sup>TH</sup> MAIN  
DOLLARS SCHEME, BTM 1<sup>ST</sup> STAGE  
R/AT NO.100, 34<sup>TH</sup> MAIN, 2<sup>ND</sup> CROSS  
BTM LAYOUT, 1<sup>ST</sup> STAGE  
BENGALURU – 560 078.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1;  
SRI M.S.SHYAM SUNDAR, SR. ADVOCATE A/W.,  
DR. VANDANA P. L., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CHARGE SHEET FILED BY THE POLICE IN CR.NO.60/2016 OF CYBER CRIME POLICE STATION CID BENGALURU WHICH IS NOW REGISTERED AS C.C.NO.3218/2021 ON THE FILE OF THE COURT OF I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU FOR THE OFFENCES P/U/S.465 AND 468 OF IPC AND SEC.66 AND 66 D OF IT ACT 2000 AND ALL FURTHER PROCEEDINGS.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner is before this Court calling in question proceedings in C.C.No.3218 of 2021 pending before the I Additional Chief Metropolitan Magistrate, Bengaluru, arising out of Crime No.60 of 2016 registered for offences punishable under Sections

465 and 468 of the IPC and Sections 66 and 66D of the information Technology Act, 2000 (hereinafter referred to as 'the Act' for short).

2. Heard Sri Kiran S.Javali, learned senior counsel appearing for the petitioner, Sri B.N. Jagadeesha, learned Additional State Public Prosecutor for respondent No.1 and Sri M.S. Shyam Sundar, learned senior counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:-

The issue in the *lis* revolves around domain name of Alliance University. In the year 2006, it appears, one Sudhir G. Angur registers a domain name 'www.alliance.edu.in' with ERNET India and is said to have regularly renewed the same. The renewal certificate and the renewal request at the relevant point in time are appended to the petition. In 2010, Alliance Business School Private Limited, a company registered under Section 25 of the Companies Act, 1956. The Alliance Business School Private Limited is the sponsoring body to the Alliance University, which was established through an Act called Alliance University Act, 2010. Since Alliance Business School Private Limited was the sponsoring body to Alliance

University, the official website of both the Alliance Business School and the Alliance University was common, which is quoted hereinabove. It is the case of the prosecution that the domain name of the Alliance Business School Private Limited is registered as www.alliance.edu.in with ERNET India, on 16.03.2010. In July 2012, the domain name is hosted on the server of Net4 India on behalf of Sudhir G.Angur. The petitioner is the Ex-Chancellor of Alliance University. It appears that huge dispute arose between the members of the Board of Directors of Alliance University. Owing to certain financial irregularities, embezzlement of funds and other allied misgivings, the petitioner was terminated from the post of Chancellor by the Board of Directors of the sponsoring body - Alliance Business School. After the termination, comes the impugned complaint on 15-06-2016. The complaint was with regard to creation of email ID by the petitioner as 'allianceblr21@gmail.com' and using it fraudulently, sent a letter on the Alliance University letter head to the administrator of ERNET India, New Delhi, claiming himself to be the Chancellor of Alliance University, requested to change the Admin e-mail ID of the domain name - 'www.alliance.edu.in' from 'santosh.k@alliance.edu.in' to

'allianceblr21@gmail.com'. This is said to be the fraudulent act on the part of the petitioner. The Police registers a crime on the basis of the complaint so registered by the 2<sup>nd</sup> respondent in Crime No.60 of 2016, initially only for offences punishable under Sections 66 and 66D of the Act. The Police then conduct investigation and file a charge sheet against the petitioner only and dropped all others, who were arrayed as accused in the crime, adding offences punishable under Sections 465 and 468 of the IPC. The learned Magistrate takes cognizance of the offences and registers a criminal case in C.C.No.3218 of 2021. It is the taking of cognizance and issuance of summons that has led the petitioner to this Court in the subject petition.

4. The learned senior counsel Sri Kiran S.Javali, appearing for the petitioner would contend that the dispute between the petitioner and Sudhir G.Angur has led to registration of several cases against the petitioner and several cases by the petitioner against Sudhir G. Angur. He would submit that the petitioner is the founder of Alliance University and so he is the lifetime Chancellor by virtue of Section 15(2) of the Act. It is his submission that Sudhir

G. Angur, the current Chancellor is allegedly involved in the murder of former Vice-Chancellor of Alliance University and to get over the same, has sought to register several crimes against the petitioner. He would submit that the domain name 'www.alliance.edu.in' was the one funded by the petitioner on the score that the petitioner has a right for creation of a domain name and accordingly, created the domain name. There is no fraud played. There is no forgery nor there is any violation of the Act. It is his submission that the complainant and Sudhir G.Angur along with their associates have attempted to fraudulently appoint themselves as Directors and had in fact, fabricated digital signature of the petitioner. He would submit that these are not the matters concerning the subject petition. He would submit that the High Court of Delhi in the case of **ALLIANCE BUSINESS SCHOOL V. MADHUKAR G. ANGUR in CM(M) No.1587/2018, C.M.Appls.No.53754/2018 and 53090/2019, disposed on 18.12.2019** had directed both parties to exercise restraint with regard to publishing defamatory articles against each other. In all, he would submit that for a dispute that has to be thrashed out before a competent civil Court, criminal law is set into motion.

5. *Per contra*, the learned senior counsel Sri M.S. Shyam Sundar, appearing for respondent No.2 would vehemently refute the submissions to contend that the petitioner has after being terminated from the post of Chancellor of Alliance University has been fraudulently using the domain name for the purposes of illegal gains. He would further contend that the Police after investigation have filed a charge sheet. It is a matter of trial for the petitioner to come out clean as there is *prima facie* evidence against the petitioner for the offences punishable under the Act and forgery.

6. The learned Additional State Public Prosecutor would also toe the lines of the learned senior counsel Sri M.S. Shyam Sundar, in seeking dismissal of the petition on the score that the petitioner has to come out clean in a full-fledged trial.

7. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

8. The afore-narrated facts and link in the chain of events are all, a matter of record. The petitioner was the founder Chancellor

of Alliance University and when dispute arose, he is terminated and the said termination is a subject matter of challenge before different *fora*. The issue in the *lis* would commence on 15-06-2016, when a complaint comes to be registered against the petitioner before the CEN Police Station, which is a Cyber Crime Police Station. Since the entire issue has triggered from the complaint, I deem it appropriate to notice the same.

"Subject: Impersonation, cheating, causing denial to access of Alliance University CRN ID: 000359137 because of the illegal activities done by following persons:

(1) Dr. Madhukar G. Angur, residing at Flat, "Happy Builders", Opp. to 48/B, 1<sup>st</sup> Floor, 27<sup>th</sup> Main, 1<sup>st</sup> Cross, BTM 1<sup>st</sup> Stage, Bengaluru - 560 068

(2) Ponnanna address not known but having Mobile No.9686179119,

(3) Dayanand having Dayanand.tejasvi@gmail.com (claiming himself as Vice-Chancellor of Alliance University)

(4) Kirthikumar address not known but having Mobile No.9591111144.

1. I under signed is the Director of Alliance Business School which is a sponsoring body for Alliance University established in 2010 by an enactment. The university has the domain name [www.alliance.edu.in](http://www.alliance.edu.in) which is registered under the name of Alliance Business School. The registered office of Alliance University is # 2 & 3, 36<sup>th</sup> Main, 1<sup>st</sup> Cross, Dollars Scheme, BTM 1<sup>st</sup> Stage, Bangalore - 560068. Alliance University is one of the top private universities in the country. The university has

6500 students, 600 employees and 360 faculty members.

2. The Alliance Business School company's domain name [www.alliance.edu.in](http://www.alliance.edu.in) was registered on 16<sup>th</sup> March 2010.
3. On 10<sup>th</sup> June 2016, our IT Head Mr. Santosh Kawari received an email at 9:30 am stating that "Your contact details for domain: [www.alliance.edu.in](http://www.alliance.edu.in) has been updated successfully." Sensing some foul play, Mr. Santosh Kawari immediately contacted the Domain Registrar ERNET India over phone raising objection regarding change in admin e-mail ID of Domain, for which he came to know that Mr. Madhukar Angur, Ex-Chancellor, who had been terminated from the post and designation of the Chancellor of Alliance University on 7<sup>th</sup> April 2016, had created a fraudulent email id [allianceblr21@gmail.com](mailto:allianceblr21@gmail.com), and sent a forged letter on university letterhead to ERNET India, New Delhi, claiming himself as Chancellor and requesting for changing the admin mail id of the domain. Thereafter [domain@eis.ernet.in](mailto:domain@eis.ernet.in) replied to both the email ids mentioned in the forged letterhead and requested for confirmation on the same. The confirmation mail sent by [domain@eis.ernet.in](mailto:domain@eis.ernet.in) was received by the IT Department, which is headed by Mr. Santosh Kawari, and further he brought it to the notice of the present Chancellor of Alliance University, Mr. SudhirAngur.
4. Mr. SudhirAngur immediately sent a letter to the ERNET India to update the Registrant and Administrative contact mail id for the domain [www.alliance.edu.in](http://www.alliance.edu.in) on 10<sup>th</sup> June 2016, and now the contact details of the domain [www.alliance.edu.in](http://www.alliance.edu.in) has been updated successfully.
5. Alliance University for its web hosting requirement has taken services from Net 4 IndiaLtd, D - 25, Sector -3, Noida, UP-201301. Net 4 India has registered a CRN ID: 000359137 for Alliance University web hosting requirement and other related services. The Alliance University website under the domain name

www.alliance.edu.in is hosted in Net 4 India under the above CRN ID: 000359137.

- 6. This being so, on 13<sup>th</sup> June 2016, University IT team was not able to login to the control panel of the above CRN ID immediately, IT team contacted Net4 customer support center and was told by the customer support executive that above CRN ID is blocked on the direction of Karnataka Cyber Crime police and also told that under the directions of Mr. Madhukar Angur, Ponnanna Mobile No.9686179119, Dayanand having mail id Dayanand.tejasvi@gmail.com (claiming himself as Vice-Chancellor of Alliance University), Kirthikumar address not known but having Mobile No.9591111144 (who are not related to the Alliance University) has submitted some related documents to Net4 India.**
- 7. The website maintenance of the University and its colleges are affected due to blocking of the above CRN ID. The Alliance Business School and Alliance University other domain names are also registered and hosted under this same CRN ID. Due to blocking of this all the related services under this CRN ID are not accessible.**
8. It is to bring to your kind notice that Mr. Madhukar Angur was terminated from the post and designation of Chancellor of Alliance University on 7<sup>th</sup> April, 2016 by the authority of the Board of the Sponsoring Body, Ms. Alliance Business School by following due process and procedure of law. Prior to the termination, the Board issued order of suspension cum notice for explanation for having committed financial irregularities, embezzlement of funds, breach of trust, serious illegalities, creating fraudulent documents, and misusing official positions. Subsequently, by following due process and procedure of law, Mr. Madhukar Angur was terminated from the post and designation of Chancellor of Alliance University. (A copy of suspension and termination order is enclosed for kind purusal).

9. The Honourable City Civil Court and Session Judge Bangalore vide CCH/9 O.S. 2911/2016 dated 12-04-2016 passed an order of injunction restraining Mr. Madhukar Angur, Priyanka B. S. and his associates from interfering in the administration, management and operations of Alliance Business School and Alliance University, in any manner (Copy of the injunction order is enclosed).
10. The Higher Education Department, Government of Karnataka took note of his termination and the irregularities he has committed as the ex-chancellor and appointed a one man commission comprising Dr. M. I. Savadatti to investigate into all allegations against him. (A copy of the order is attached herewith).
- 11. The Board of Directors of the Sponsoring Body, Alliance Business School vide resolution has appointed Mr. Sudhir G. Angur as the new Chancellor of Alliance University. (A copy of the appointment of Mr. Sudhir G. Angur as the new Chancellor of Alliance University order is enclosed).**
- 12. Mr. Madhukar Angur who is dismissed from the services and positions of Alliance University, has been going around misusing the nomenclature, seals, assets and intellectual property of the University with his false claims that he is the Chancellor of University. A complaint of impersonation has filed before the Anekal Police Station on 27-4-2016 following which a case in Anekal PS Crime No. 124/2016 u/s 419, 420, 120B, 469, 468 has been registered.**
- 13. By unauthorised access, Mr. Madhukar Angur and others who are named above are trying to disrupt the functioning of the university and is trying to hijack the website and domain and also tried to unsuccessfully change the email-d. By this act the intention of Mr. Madhukar Angur was to stop the huge transaction online facility which is basically meant for students and thereby causing huge loss**

**to the university and wrongful gain for him. This act is cheating by personation by Mr. Madhukar Angu, Ponnana, Dayanand and Kirthikumar has led to denial to access of Alliance University CRN ID: 000359137 hosted by Net 4 India, wherein causing loss to university and students at large.**

14. In the larger interest of students, faculty and staff, we request you to please initiate action under the law against Mr. Madhukar G. Angur and Mr. Ponnana and issue direction to Net 4 India to unblock the CRN ID 000359137 and suitable action against the above said persons."

(Emphasis added)

It is the allegation that the petitioner had been dismissed from the services of all positions of Alliance University and he has misused the nomenclature, seals, intellectual property of the University and making false claims that he is the Chancellor of the University.

9. The crux of the allegation is that, the petitioner is trying to hijack the website and domain and has unsuccessfully tried to change the email ID. The intention alleged was stopping of huge transaction in the online facility. The Police conduct investigation. The investigation leads to filing of final report - charge sheet. The summary of the charge sheet as obtaining in column No.17 reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ/ ದೋಷಾರೋಪಣೆ (ಅವಶ್ಯವಿದ್ದಲ್ಲಿ ಪ್ರತ್ಯೇಕ ಹಾಳೆ ಲಗತ್ತಿಸಿ)

Brief facts of the case / Charge (Add separate sheet, if necessary)

The following facts have been proved in the investigation:-

Alliance Business School is a company registered under Section: 25 of the Companies Act, 1956 and is the sponsoring body of the Alliance University established in the year 2010 as per the Alliance University Act, 2010. The official website of Alliance Business School as well as Alliance University is [www.alliance.edu.in](http://www.alliance.edu.in).

The domain [www.alliance.edu.in](http://www.alliance.edu.in), was registered with Ernet India by Mr. Sudhir Angur On 13-03-2006 and hosted on the server of Net4India in July 2012 on behalf of Alliance Business School and is being regularly renewed by Mr. Sudhir Angur and Mr. Santosh Kawari (IT head of Alliance Business School & Alliance University). The admin email id and the technical email id of this domain during June 2010 was [santosh.k@alliance.edu.in](mailto:santosh.k@alliance.edu.in) as per the records.

The accused, who was appointed as the first Chancellor of the Alliance University, was terminated from the post of Chancellor by the Directors of sponsoring body - Alliance Business School in the month of April 2016, as per the powers vested by the provisions of Sec: 11(i) of Alliance University Act, 2010 for various reasons of moral turpitude cheating and other offences (for which various FIRs have been registered in Anekal and other police stations). In spite of his termination, the accused illegally entered the campus, proclaimed and impersonated himself as the Chancellor of Alliance University with ulterior motive and dishonest intent to make wrongful gain and also to cause wrongful loss to the complainant's institution.

The accused, as an ex-chancellor, was well aware of the reputation of complainant's institution and the fact that the main source of income to the institution is its official domain "[www.alliance.edu.in](http://www.alliance.edu.in)" having online banking facilities/payment link, through which students used to pay the fees. As such, the accused with a malafide and dishonest intention to exploit the income and resources of the university and to make wrongful gain, had appointed/hired

many employees including Ponnanna, Dayanad Tejeswi, Syed Tousif, Naresh Koupri, Madhwa Kolhar and many more.

As the collection of fees from students was an online process through the official website [www.alliance.edu.in](http://www.alliance.edu.in), the accused in order to take control of the said website. on **10-06-2016**, impersonated himself as the Chancellor of Alliance University and sent enter to the Ernet India (Registrar of the domain "[www.alliance.edu.in](http://www.alliance.edu.in)") on the letter head of University, through an e-mail ID: "[alliancebir21@gmail.com](mailto:alliancebir21@gmail.com)" and got the Admin E-mail ID of the domain [www.alliance.edu.in](http://www.alliance.edu.in) updated from "[santosh.k@alliance.edu.in](mailto:santosh.k@alliance.edu.in)" to "[allianceblr21@gmail.com](mailto:allianceblr21@gmail.com)", which is not the official e-mail ID of alliance university or its chancellor or office bearers. On receiving the alerts on updation of admin e-mail ID of the domain, Mr. Sudhir Angur contacted Ernet India and got the admin e-mail ID re-updated to e-mail ID: "[santosh.k@alliance.edu.in](mailto:santosh.k@alliance.edu.in)"

Further, on 12-06-2016, the accused instigated one of his employee Mr. Ponnanna to sign on a printed complaint, drafted against the complainant and other directors and IT Head of Alliance Business School, and through the said complaint, without knowledge of Mr. Ponnanna, filed an FIR in Anekal police station vide FIR No. 161/2016.

After filing FIR, the accused instigated his another employee Mr. Dayananda Tejasvi to send the soft copies of FIR to **Ernet India**(Domain Registrar) and **Net4India** (Domain Hoster) to block the website [www.alliance.edu.in](http://www.alliance.edu.in) from Dayananda Tejasvi's private email ID: "[dayanand.tejasvi@gmail.com](mailto:dayanand.tejasvi@gmail.com)" on 13-06-2016. Based on the said e-mail, the Net4 India blocked CRN ID: **000359137** of the said Website, for which, the complainant and his institution's IT team were unable to access the CRN ID and to update the contents of website and hence, access was denied to the lawful user to the website. This has resulted in causing wrongful monetary loss to the complainant's institution, as the complainant's IT team was unable to update the website and to provide online facility to the students for Admission, fee payments etc.,

On 12-06-2016, the complainant purchased a new domain with an impersonating name "[www.allianceuniversity.education](http://www.allianceuniversity.education)" from "Godaddy" through Keerthi kumar, and later hosted the impersonating website in the name of Alliance University in parallel to the existing official website "[www.alliance.edu.in](http://www.alliance.edu.in)" with an ulterior motive and intention to mislead the students and divert them from the official website, and to get wrongful gain in the form of Fees.

On 26-12-2016, the accused has sent a soft copy of letter prepared on the Letter Head of Alliance University to the Ernet India through e-mail ID: [allianceblr21@gmail.com](mailto:allianceblr21@gmail.com), to change the admin e-mail ID of the five domains "[www.allianceuniversity.edu.in](http://www.allianceuniversity.edu.in), [www.allianceuniversity.ac.in](http://www.allianceuniversity.ac.in), [www.allianceuniversity.res.in](http://www.allianceuniversity.res.in), [www.alliance.ac.in](http://www.alliance.ac.in), [www.alliance.res.in](http://www.alliance.res.in)" which were registered by Mr. Sudhir Angur on behalf of Alliance Business School and got the Admin name changed and updated in the name of one Mr. Syed Tousif and updated the admin e-mail ID to [allianceblr21@gmail.com](mailto:allianceblr21@gmail.com), for the above said five domains. Later, by instigating Mr. Syed Tousif, accused hosted another impersonating website of Alliance University in the name and style [www.allianceuniveristy.edu.in](http://www.allianceuniveristy.edu.in) in parallel to the official website "[www.alliance.edu.in](http://www.alliance.edu.in)".

By instigating Mr. Madhwa Kolhar and Mr. Naresh Kopuri, the accused availed Payment gateway services from PayU with ID: 6316165614 (*Merchant ID: 139996 and Merchant Website: [www.allianceuniversity.edu.in](http://www.allianceuniversity.edu.in)*) in the name of Alliance University, but provided the Bank Account details of *Srivari Educational Services* with Account number 134611100004614 held at Andhra Bank, Marathalli Branch, Bangalore, purely with malafide intention of diverting the fee amount of Alliance University. Further by instigating Mr. Syed Tousif, the accused embedded the said PayU payment gateway link in the website [www.allianceuniversity.edu.in](http://www.allianceuniversity.edu.in) and through the said payment gateway, from 01-08-2017 to 08-11-

**2017, the accused fraudulently collected an amount of Rs 62,97,398 (Rs. Sixty-Two Lakhs Ninety-Seven Thousand Three Hundred Ninety-Eight) from the students and others through 413 transactions.**

Hence, the charge against the accused under the Sections: 66, 66(D). of IT Act 2000 (Amended Act 2008) and Sec: 465, 468 IPC."

(Emphasis added)

A perusal at the complaint and the summary of charge sheet is indicative of the fact that the entire crime is based upon change of domain name and usage of domain name by the petitioner allegedly after his termination. Whether this would amount to offences under Section 66 or under Section 66D of the Act is required to be noticed. Section 66 of the Act reads as follows:

**"66. Computer related offences.**—If any person, dishonestly or fraudulently, does any act referred to in Section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

*Explanation.*—For the purposes of this section,—

- (a) the word "dishonestly" shall have the meaning assigned to it in Section 24 of the Indian Penal Code (45 of 1860);
- (b) the word "fraudulently" shall have the meaning assigned to it in Section 25 of the Indian Penal Code (45 of 1860)."

Section 66 deals with computer related offences. Section 66 of the Act makes one punishable, if he dishonestly or fraudulently does any act referred to in Section 43 of the Act. Section 43 of the Act reads as follows:

**"43. Penalty and Compensation for damage to computer, computer system, etc.**—If any person without permission of the owner or any other person who is in-charge of a computer, computer system or computer network,—

- (a) accesses or secures access to such computer, computer system or computer network or computer resource;
- (b) downloads, copies or extracts any data, computer database or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
- (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
- (d) damages or causes to be damaged any computer, computer system or computer network, data, computer database or any other programmes residing in such computer, computer system or computer network;
- (e) disrupts or causes disruption of any computer, computer system or computer network;
- (f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

- (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;
- (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,
- (i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
- (j) steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

he shall be liable to pay damages by way of compensation to the person so affected.

*Explanation.*—For the purposes of this section,—

- (i) “computer contaminant” means any set of computer instructions that are designed—
  - (a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or
  - (b) by any means to usurp the normal operation of the computer, computer system, or computer network;
- (ii) “computer database” means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

- (iii) "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;
- (iv) "damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means;
- (v) "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form."

Section 43 of the Act deals with penalty and compensation for damage to computer and computer system. It has several sub-sections. It punishes any person without permission of the owner or any other person who is in charge of the computer accesses and the computer system becomes open to punishment. Section 66D of the Act, reads as follows:

**“66-D. Punishment for cheating by personation by using computer resource.—**Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.”

Section 66D punishes any person for cheating or impersonation by using computer resource. The petitioner in the case at hand claims

to be the founder of Alliance University and a life time Chancellor under Section 15(2) of the Alliance University Act. The petitioner, on that strength has continued to operate the domain and even according to the complaint, has unsuccessfully tried to change E-mail ID. All this, the petitioner admits to have done on the ground that he is the Chancellor and continued to be the Chancellor of the Alliance University.

10. The other allegations are, for offences punishable under the IPC *viz.*, Sections 465 and 468 of the IPC. They read as follows:

**“465. Punishment for forgery.**—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

... ..

**468. Forgery for purpose of cheating.**—Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 465 of IPC punishes for forgery and Section 468 punishes for commission of forgery for the purpose of cheating. Section 66D of the Act and Section 468 of the IPC have a common ingredient

*i.e.*, cheating with dishonest intention. Wherefrom dishonest intention has sprung in the case at hand is understandable. The petitioner on the strength of him being the Chancellor of Alliance University and on the reason that he has continued as Chancellor of the University has operated the domain or opened the domain as the case may be. It was always open to the complainant to register a civil suit seeking an injunction against the petitioner for usage of domain name. But, instead, the complainant chooses to set the criminal law into motion. None of the ingredients that are necessary to be found in the afore-quoted offences are found even to their semblance in the case at hand. A seemingly civil dispute of usage of domain name is projected to become a crime. It is in such circumstance, the Apex Court holds that the complaint should be read between the lines to see the real intent of the complainant.

11. The Apex Court in the case of **MAHMOOD ALI v. STATE OF UTTAR PRADESH**<sup>1</sup> has held as follows:

".... ....

***Analysis***

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<sup>1</sup> **2023 SCC OnLine SC 950**

**8.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the FIR bearing No. 127 of 2022 should be quashed?

**9.** We are of the view that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence as alleged are disclosed. It is pertinent to note that the FIR in question came to be lodged after a period of 14 years from the alleged illegal acts of the appellants. It is also pertinent to note that in the FIR no specific date or time of the alleged offences has been disclosed.

**10.** The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . The parameters are : (SCC pp. 378-79, para 102)

"102. ... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

We are of the view that the case of the present appellants falls within Parameters 1, 5 and 7, respectively, of *Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] .

**11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.**

**12.** We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then he would ensure that

the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. **Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.**

**13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.** Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

**14.***State of A.P. v. Golconda Linga Swamy* [*State of A.P. v. Golconda Linga Swamy*, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held : (*Golconda Linga Swamy case* [*State of A.P. v. Golconda Linga Swamy*, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , SCC p. 527, paras 5-7)

"5. ... Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. **In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In *R.P. Kapur v. State of Punjab* [*R.P. Kapur v. State of Punjab*, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] , this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (SCC OnLine SC para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) *where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

7. *In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction*

*under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. **Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.***"

(emphasis supplied)

**15.** In the result, this appeal succeeds and is hereby allowed. The impugned order [*Mahmood Ali v. State of U.P.*, 2022 SCC OnLine All 2568] passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 127 of 2022 dated 4-6-2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed."

(Emphasis supplied)

The Apex Court holds that in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case, over and above the averments. The Court exercising jurisdiction under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India should not restrict itself to the stage of the case but has to consider overall circumstance. If the complaint and the charge sheet are considered

on the bedrock of the principles laid down by the Apex Court for examination of the issue, it would unmistakably emerge that a seemingly civil dispute is projected to become a crime.

12. It becomes apposite to refer to the judgment of the Apex Court in the case of **DEEPAK GABA v. STATE OF UTTAR PRADESH**<sup>2</sup>, wherein it is held as follows:

“.... ....

**20.** In the present case, the ingredients to constitute an offence under Section 420 read with Section 415 IPC are absent. The pre-summoning evidence does not disclose and establish the essential ingredients of Section 415 IPC. There is no assertion, much less legal evidence, to submit that JIPL had engaged in dishonesty, fraud, or intentional inducement to deliver a property. It is not the case of Respondent 2 complainant that JIPL had tried to deceive them, either by making a false or misleading representation, or by any other action or omission; nor is it their case that JIPL had offered any fraudulent or dishonest inducement to deliver a property. As such, given that the ingredients of Section 415 IPC are not satisfied, the offence under Section 420 IPC is not made out.

**21.** Section 471IPC [ **“471. Using as genuine a forged document or electronic record.**—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”] is also not attracted. This Section is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reasons to believe to be a forged document or

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<sup>2</sup> (2023) 3 SCC 423

electronic record. This Court in *Mohd. Ibrahim* [*Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to Respondent 2 complainant. We respectfully concur with the clarification as well as the ratio explaining Sections 415, 464, etc. IPC.], has elucidated that the condition precedent of an offence under Section 471 IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471 IPC, it has to be proven that the document was "forged" in terms of Section 470 [ "**470. Forged document.**—A false document [or electronic record] made wholly or in part by forgery is designated "a forged document or electronic record." ] , and "false" in terms of Section 464IPC [ "**464. Making a false document.**—A person is said to make a false document or false electronic record—*First.*—Who dishonestly or fraudulently—(a) makes, signs, seals or executes a document or part of a document;(b) makes or transmits any electronic record or part of any electronic record;(c) affixes any electronic signature on any electronic record;(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,with the intention of causing it to be believed that such document or part of a document, electronic record or \*[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or\* Substituted for "digital signature" by Act 10 of 2009, Section 51(e) (w.e.f. 27-10-2009)*Secondly.*—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*Thirdly.*—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not

know the contents of the document or electronic record or the nature of the alteration.”] .

**22.** Section 470 lays down that a document is “forged” if there is:

(i) fraudulent or dishonest use of a document as genuine; and

(ii) knowledge or reasonable belief on the part of the person using the document that it is a forged one.

Section 470 defines a “forged document” as a false document made by forgery.

**23.** As per Section 464IPC, a person is said to have made a “false document”:

(i) if he has made or executed a document claiming to be someone else or authorised by someone else;

(ii) if he has altered or tampered a document; or

(iii) if he has obtained a document by practising deception, or from a person not in control of his senses.

**24. Unless the document is false and forged in terms of Sections 464 and 470IPC respectively, the requirement of Section 471IPC would not be met.**

**25.** In the counter-affidavit filed by Respondent 2 complainant, it is submitted that a few bills were faked/forged, as the goods were not ordered. Reference is made to balance of Rs 79,752 shown on 30-3-2013, which was objected to and thereupon as per the complaint itself the demand/bill was withdrawn. This would not make the bill a forged document or false document, in terms of Sections 470 and 464 IPC. The complaint was made in the year 2017, four years after the bill/claim had been withdrawn, reflecting no criminal intent. The bill was not fake or forged, and at best it could be stated that it was wrongly raised. Moreover, the

pre-summoning evidence is silent with regard to this bill and mens rea on the part of the accused is not shown and established. Same would be the position with regard to the bill/invoice of Rs 53,215 which was as per the complaint, sent directly to Manav Rachna International at Faridabad. The bill/invoice is not doubted as "forged" or "false" within the meaning of Sections 470 and 464 IPC. No doubt, Adhunik Colour Solutions is mentioned as the buyer, and Manav Rachna International as the consignee, albeit the invoice was issued by JIPL. Pre-summoning evidence does not help and make out a case predicated on this bill/invoice. In the counter-affidavit filed before us, it is alleged that since this bill was sent to Faridabad, JIPL had added the GST in the invoice. It is argued that had Respondent 2 complainant supplied the goods, instead of GST, VAT as applicable in Delhi would have been levied, as Respondent 2 complainant was based in Delhi. This argument is rather fanciful and does not impress us to justify summoning for the offence under Section 471 IPC. Besides, the assertion is not to be found in the complaint, and cannot be predicated on the pre-summoning evidence.

**26.** For completeness, we must record that the appellants have placed on record the dealership agreement dated 11-4-2012, which, inter alia states that JIPL has a discretion to establish direct contractual relationship with specific customers, if JIPL feels they can be served better. Further, in such a situation, the dealer, if JIPL agrees, can act as an intermediary. Assuming the bill/invoice had wrongly recorded Respondent 2 complainant as the buyer, it is not doubted that Manav Rachna International was the consignee. At best, Respondent 2 complainant would not be liable, had Manav Rachna International failed to pay. Non-payment is also not alleged in the complaint or the pre-summoning evidence. Reliance on objections vide emails dated 4-7-2014 and 21-7-2014 are of no avail, as they are for the period prior to 31-7-2014, when the bill/invoice was raised.

**27.** It is evident from the pre-summoning evidence led and the assertions made in the criminal complaint that the dispute raised by Respondent 2 complainant primarily pertains to settlement of accounts. The allegations are:

(i) goods supplied by JIPL were not as per the requirements and demands of Respondent 2 complainant,

(ii) goods supplied were different from the order placed, and

(iii) goods lying with, and returned by Respondent 2 complainant have not been accounted for.

These assertions, even if assumed to be correct, would not fulfil the requirements of Section 405IPC, or for that matter Sections 420 or 471. **The material on record does not reflect and indicate that JIPL indeed had the dishonest/culpable intention for the commission of the alleged offences under the IPC. Unless the ingredients of aforesaid Sections of the IPC are fulfilled, the offence under Section 120-BIPC, for criminal conspiracy, would not be made. In fact, a combined reading of the complaint and the pre-summoning evidence does not disclose any element of criminal conspiracy as per Section 120-AIPC. The complaint discloses a civil dispute and grievance relating to the claim made by JIPL.** What is challenged by Respondent 2 complainant is the demand of Rs 6,37,252.16p raised by JIPL as the amount payable till the year ending 2016. This assertion made by JIPL is questioned as incorrect. The demand, even if assumed to be wrong, would not satisfy the ingredients of Section 405, or Sections 420 or 471IPC, so as to justify the summoning order. As noted above, JIPL had filed a criminal case under Section 138 of the NI Act as two cheques for Rs 1,93,776 and Rs 4,99,610 issued by them, on presentation, were dishonoured on account of "*insufficient funds*".

**28. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by Respondent 2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420 and 471IPC, as the allegations pertain to alleged breach of**

**contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in *Thermax Ltd. v. K.M. Johnny* [*Thermax Ltd. v. K.M. Johnny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] , as it refers to earlier case laws in copious detail.**

**29. In *Thermax* [*Thermax Ltd. v. K.M. Johnny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] , it was pointed out that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion.**

**30. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinise the evidence brought on record. He/She may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. [*Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713; *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC**

(Cri) 1400]; and *Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124.]

**31.** Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

**32.** While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. [*Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479; *Abhijit Pawar v. Hemant Madhukar Nimbalkar*, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192; and *Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713.] In the present case, the said exercise has not been undertaken.

**33.** The order sheet of the trial court enclosed with the appeal reveals that notwithstanding that the summoning order was limited to unnamed Manager and Chief Manager of JIPL, the Additional Chief Judicial Magistrate had deemed it appropriate to issue non-bailable warrant. The non-bailable warrant was not issued in the name of any person but by designation against the Chief Manager JIPL, Andheri East, Mumbai. This was also one of the reasons that had prompted

the appellants to the file the petition under Section 482 of the Code.

**34. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. [*Birla Corpn. Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713*]; *Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124*]; *R.P. Kapur v. State of Punjab, AIR 1960 SC 866*; and *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426.*] Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”**

(Emphasis supplied)

A little earlier, the Apex Court in **RANDHEER SINGH v. STATE OF UTTAR PRADESH**<sup>3</sup> has held as follows:

“..... ....”

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<sup>3</sup> (2021) 14 SCC 626

**24.** A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a power of attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the power of attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness.

**25.** Ms Deepika Kalia, learned counsel appearing on behalf of the State, competently argued the matter and vehemently tried to persuade this Court not to intervene. She even sought time to produce further documents. However, the charge-sheet speaks for itself and there could be no question of improvement of the charge-sheet read with the FIR, either by adducing documents or by filing affidavit or by making oral submissions.

**26.** Mr Chandra Prakash, learned counsel appearing on behalf of the appellant cited certain judgments of this Court in *Mohd. Ibrahim v. State of Bihar* [*Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] ; *Paramjeet Batra v. State of Uttarakhand* [*Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76] ; *Uma Shankar Gopalika v. State of Bihar* [*Uma Shankar Gopalika v. State of Bihar*, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] ; *Vesa Holdings (P) Ltd. v. State of Kerala* [*Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293 : (2015) 3 SCC (Cri) 498] ; *Robert John D'Souza v. Stephen V. Gomes* [*Robert John D'Souza v. Stephen V. Gomes*, (2015) 9 SCC 96 : (2015) 3 SCC (Cri) 724] ; and *Kapil Agarwal v. Sanjay Sharma* [*Kapil Agarwal v. Sanjay Sharma*, (2021) 5 SCC 524 : (2021) 2 SCC (Cri) 634] .

**27.** In *Mohd. Ibrahim* [*Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] , this Court held as under : (SCC pp. 757-60, paras 19-24 & 27-30)

"19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

- (i) to deliver any property to any person, or
- (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused *tried to deceive him* either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

*A clarification*

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is 'deliberate deception, treachery or cheating intended to gain advantage'. Section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract.

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27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows:

**'24. "Dishonestly".**—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".'

28 [Ed. : Para 28 corrected vide Official Corrigendum No. F.3/Ed.B.J./149/2009 dated 6-10-2009.] . To "defraud" or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).

- (ii) Fraudulent claim to property to prevent seizure (Section 207).
- (iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210).
- (iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).
- (vi) Fraudulent acts relating to stamps (Sections 255 to 261).
- (vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).
- (viii) Cheating (Sections 415 to 420).
- (ix) Fraudulent prevention of debt being available to creditors (Section 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).
- (xi) Forgery making or executing a false document (Sections 463 to 471 and 474).
- (xii) Fraudulent cancellation/destruction of valuable security, etc. (Section 477).
- (xiii) Fraudulently going through marriage ceremony (Section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

*Section 504 of the Penal Code*

29. The allegations in the complaint do not also make out the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to

intentional insult with intent to provoke breach of peace. The allegation of the complainant is that when he enquired with Accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to Appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to the accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by the first appellant in favour of the second appellant.

#### *Conclusion*

30. The averments in the complaint if assumed to be true, do not make out any offence under Sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing hurt under Section 323IPC."

**28.** In *Paramjeet Batra* [*Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76] , this Court held that : (SCC p. 676, para 12)

**"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted**

**as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”**

**29.** In *Uma Shankar Gopalika* [*Uma Shankar Gopalika v. State of Bihar*, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] , this Court found that the complaint, in that case, did not disclose any criminal offence at all, much less any offence under Section 420 or Section 120-BIPC. The case was purely a civil dispute between the parties for which remedy lay before the civil court.

**30.** In *Vesa Holdings (P) Ltd.* [*Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293 : (2015) 3 SCC (Cri) 498] , this Court held : (SCC pp. 297-98, para 13)

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court [*Maniprasad v. State of Kerala*, 2011 SCC OnLine Ker 4251] committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

**31.** In *Robert John D'Souza* [*Robert John D'Souza v. Stephen V. Gomes*, (2015) 9 SCC 96 : (2015) 3 SCC (Cri) 724] , this Court held : (SCC pp. 100-01, paras 12-13 & 15-16)

"12. As far as the offence of cheating is concerned, the same is defined in Section 415IPC, for which the punishment is provided under Section 420IPC. Section 415 reads as under:

**415. Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

*Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section.

*Illustrations*

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From the above language of the section, one of the essential ingredients for the offence of cheating is deception, but in the present case, from the contents of the complaint it nowhere reflects that the complainant was deceived or he or anyone else was induced to deliver the property by deception. What was done, was so reflected in the resolutions, and sale deeds.

13. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234] a three-Judge Bench of this Court has laid down the law as to quashment of proceedings under Section 482CrPC as follows : (SCC p. 695, para 7)

'7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal

prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.'

15. In *Inder Mohan Goswami v. State of Uttaranchal* [*Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259], this Court in paras 25 and 46 has observed as under : (SCC pp. 10-11 & 16)

'25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions* [*Connelly v. Director of Public Prosecutions*, 1964 AC 1254 : (1964) 2 WLR 1145 (HL)] Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *Director of Public Prosecutions v. Humphrys* [*Director of Public Prosecutions v. Humphrys*, 1977 AC 1 : (1976) 2 WLR 857 (HL)] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

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46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.'

16. In view of the above discussion and the facts and circumstances of the case, we are of the view that none of the offences for which the appellants are summoned, is made out from the complaint and material on record. We further find that it is nothing but abuse of process of law on the part of the complainant to implicate the appellants in a criminal case after a period of twelve years of execution of registered sale deeds in question, who is neither party to the sale deeds nor a member of the Society. Therefore, we allow the appeal and set aside the orders passed by the High Court [*Walter D'Mello v. Stephen V. Gomes*, 2014 SCC OnLine Kar 12058] and that of the courts below. Accordingly, the order passed by the Magistrate summoning the appellants in the criminal complaint filed by Respondent 1, in respect of the offences punishable under Sections 406, 409 and 420IPC, also stands quashed."

**32. In *Kapil Agarwal* [*Kapil Agarwal v. Sanjay Sharma*, (2021) 5 SCC 524 : (2021) 2 SCC (Cri) 634] , this Court observed that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.**

**33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the appellant is concerned. There is no whisper of how and in what manner, this appellant is involved in any criminal offence and the charge-sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482CrPC should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal**

**texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in *Paramjeet Batra* [*Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76] extracted above.**

**34.** The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the charge-sheet so far as this appellant is concerned. The other accused Rajan Kumar has died.”

(Emphasis supplied)

If the facts obtaining in the case at hand, the complaint and summary of the charge sheet are noticed, the complaint is registered to wreak vengeance against the petitioner in a seemingly civil dispute, rendering it a colour of crime. In such circumstances, this Court should step into exercise its jurisdiction under Section 482 of the Cr.P.C. and obliterate the crime, failing which, it would become an abuse of the process of law and result in miscarriage of justice.

13. For the aforesaid reasons, the following:

**ORDER**

- (i) Criminal petition is allowed.
- (ii) Proceedings in C.C.No.3218 of 2021 pending before I Additional Chief Metropolitan Magistrate, Bengaluru, arising out of crime in Crime No.60 of 2016 of Cyber Crime Police Station, Bangalore, stand quashed.
- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora*.

As a consequence, I.A.No.1/2023 stands disposed.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

nvj  
CT:SS